

THIS INSTRUMENT PREPARED BY

Robert C. Liddon

License # 1253

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

165 Madison Avenue, Suite 2000

Memphis, TN 38103

RETURN TO:

Mary Aronov

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

165 Madison Avenue, Suite 2000

Memphis, TN 38103

Indexing Instructions: Section 33, Township 1 South, Range 6 West, Desoto County, Mississippi

MODIFICATION AGREEMENT
(DESOTO COUNTY, MISSISSIPPI)

THIS AGREEMENT is made and entered into as of the 27th day of September, 2012, by and between **FIRST TENNESSEE BANK NATIONAL ASSOCIATION**, a national banking association having a place of business in Shelby County, Tennessee, party of the first part ("Bank" or "Beneficiary"), and **KEMMONS WILSON, INC.**, party of the second part ("Borrower" or "Grantor").

Recitals of Fact

Grantor, Bank and Colorado Oaks, LLC, a Colorado limited liability company ("Colorado Oaks"), entered into that certain Fourth Amended and Restated Development and Construction Loan Agreement dated July 29, 2010 (the "Fourth Amended Loan Agreement"), which Fourth Amended Loan Agreement is being amended and restated by that certain Fifth Amended and Restated Development and Construction Loan Agreement dated of even date herewith.

Whereas, under the Fourth Amended Loan Agreement, the Eighth Amended and Restated Revolving Line of Credit Promissory Note, dated December 15, 2009, in the stated principal sum of Twenty-Eight Million Seven Hundred One Thousand Five Hundred Forty-Four Dollars (\$28,701,544.00), executed by the Grantor and payable to the order of the Bank (the "Eighth Amended Revolving Note") was reduced to the principal sum of Twenty-Eight Million Two Hundred Sixty-Six Thousand Two Hundred Fifty and 13/100 Dollars (\$28,266,250.13) and was split in to four notes, a Ninth Amended and Restated Term Loan Promissory Note, dated July 29, 2010, in the principal sum of Sixteen Million Six Hundred Fifty Thousand Two Hundred Sixty-Three and 13/100 Dollars (\$16,650,263.13) (the "Ninth Amended Term Note"), a Ninth Amended and Restated Revolving Line of Credit Promissory Note-Tennessee, dated July 29, 2010, in the principal sum of Three Million Six Hundred Thousand Dollars (\$3,600,000.00) (the "Ninth Amended Revolving Note-Tennessee"), a Ninth Amended and Restated Revolving Line of Credit Promissory Note-Mississippi, dated July 29, 2010, in the principal sum of Two Million Six Hundred Sixty-Five Thousand Eight Hundred Dollars (\$2,665,800.00) (the "Ninth Amended Revolving Note-Mississippi"), and a Ninth Amended and Restated Revolving Line of Credit Promissory Note-Colorado, dated July 29, 2010, in the principal sum of Four Million Six Hundred Sixty-Two Thousand Two Hundred Sixty-Three and 02/100 Dollars (\$4,662,263.02) (the "Ninth Amended Revolving Note-Colorado").

In connection with the Fifth Amended Loan Agreement, the Ninth Amended Term Note is being reduced, amended, restated and extended under the terms of that certain Tenth Amended and Restated Term Loan Promissory Note, dated of even date herewith, in the principal sum of Six Million Seven Hundred Fifty-Three Thousand Seven Hundred Fifty Dollars (\$6,753,750.00),

executed by the Grantor and payable to the order of the Bank; the Ninth Amended Revolving Note-Tennessee is being increased, amended, and restated under the terms of that certain Tenth Amended and Restated Revolving Line of Credit Promissory Note-Tennessee, dated of even date herewith in the principal sum of Four Million Eight Hundred Thirty-Six Thousand Five Hundred Seventy Dollars (\$4,836,570.00), executed by the Grantor and payable to the order of the Bank, Ninth Amended Revolving Note-Mississippi is being decreased, amended and restated under the terms of that certain Tenth Amended and Restated Revolving Line of Credit Promissory Note-Mississippi, dated of even date herewith in the principal sum of Two Million Five Hundred Thirty-Four Thousand Two Hundred Twenty-One Dollars (\$2,534,221.00), executed by the Grantor and payable to the order of the Bank, and the Ninth Amended Revolving Note-Colorado is being increased, amended and restated under the terms of that certain Tenth Amended and Restated Revolving Line of Credit Promissory Note-Colorado, dated of even date herewith in the principal sum of Ten Million Four Hundred Seventy-Nine Thousand Five Hundred Fourteen Dollars (\$10,479,514.00), executed by the Grantor and payable to the order of the Bank.

The Bank has also issued certain letters of credit in the total aggregate face amount of \$343,000.00 (the "Letters of Credit") naming the Grantor as account debtor, under the terms of those certain Applications for Irrevocable Standby Letter of Credit dated, March 29, 2006, October 16, 2006, and March 14, 2007 (the "Reimbursement Agreements").

The Grantor has previously executed certain Deeds of Trust as described on Exhibit "A" attached hereto, as amended (the "Deeds of Trust"), in order to secure the indebtedness from the Grantor. The parties desire to amend the Deeds of Trust to reflect the current indebtedness and maturity dates thereof owing from the Grantor to the Bank secured and to be secured by mortgage liens under each of the Deeds of Trust and to further reflect the modifications that have been made between the parties under the terms of the Fifth Amended Loan Agreement.

NOW, THEREFORE, in consideration of the premises as set forth in the Recitals of Fact, the mutual covenants and agreements hereinafter set out, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the parties as follows:

Agreements

1. The Obligations as defined in each of the Deeds of Trust and to be secured thereby are hereby modified to read as follows:

(a) payment of the indebtedness (and interest thereon) evidenced and to be evidenced by that certain Tenth Amended and Restated Term Loan Promissory Note, dated September 27, 2012, in the principal sum of Six Million Seven Hundred Fifty-Three Thousand Seven Hundred Fifty Dollars (\$6,753,750.00), executed by the Grantor and payable to the order of the Bank, and all renewals, modifications, amendments and restatements thereof, in whole or in part (the "Tenth Amended Term Note"), said Tenth Amended Term Note being payable in installments, with the final installment being due and payable September 27, 2019;

(b) payment of the indebtedness (and interest thereon) evidenced and to be evidenced by that certain Tenth Amended and Restated Revolving Line of Credit Promissory Note-Tennessee, dated September 27, 2012, in the principal sum of Four Million Eight Hundred Thirty-Six Thousand Five Hundred Seventy Dollars (\$4,836,570.00), executed by the Grantor and payable to the order of the Bank, and all renewals, modifications, amendments and restatements thereof, in whole or in part (the "Tenth Amended Revolving Note-Tennessee"), including, but not limited to, all FUTURE ADVANCES, the principal amount of said Tenth Amended Revolving Note-Tennessee being due and payable September 27, 2019;

(c) payment of the indebtedness (and interest thereon) evidenced and to be evidenced by that certain Tenth Amended and Restated Revolving Line of Credit Promissory Note-Mississippi, dated September 27, 2012, in the principal sum of Two Million Five Hundred Thirty-Four Thousand Two Hundred Twenty-One Dollars (\$2,534,221.00), executed by the Grantor and payable to the order of the Bank, and all renewals, modifications, amendments and restatements thereof, in whole or in part (the "Tenth Amended Revolving Note-Mississippi"), including, but not limited to, all FUTURE ADVANCES, the principal amount of said Tenth Amended Revolving Note-Mississippi being due and payable September 27, 2019;

(d) payment of the indebtedness (and interest thereon) evidenced and to be evidenced by that certain Tenth Amended and Restated Revolving Line of Credit Promissory Note-Colorado, dated September 27, 2012, in the principal sum of Ten Million Four Hundred Seventy-Nine Thousand Five Hundred Fourteen Dollars (\$10,479,514.00), executed by the Grantor and payable to the order of the Bank, and all renewals, modifications, amendments and restatements thereof, in whole or in part (the "Tenth Amended Revolving Note-Colorado"), including, but not limited to, all FUTURE ADVANCES, the principal amount of said Tenth Amended Revolving Note-Colorado being due and payable September 27, 2019;

(e) payment of all indebtedness and obligations of Grantor under those certain letters of credit, and any amendments or extension thereto (the "Letters of Credit") issued by the Bank, naming Grantor as account debtor, in the aggregate principal sum of \$343,000.00 under those Application for Irrevocable Standby Letters of Credit, dated March 29, 2006, October 16, 2006, and March 14, 2007, between the Grantor and the Bank, as same may be modified or amended (the "Reimbursement Agreements");

(f) payment and performance of all indebtedness and obligations of Grantor and/or Colorado Oaks under that certain Fifth Amended and Restated Development and Construction Loan Agreement dated September 27, 2012, between Grantor, Bank and Colorado Oaks, as same may be modified, amended and/or restated (the "Loan Agreement");

(g) payment of all sums advanced by the Beneficiary to or for the benefit of the Grantor contemplated under the Deeds of Trust and performance of all obligations and covenants therein contained, including, without limitation, any amounts advanced to protect the trust estate and security interests herein granted and all attorneys' fees, court costs, and expenses of whatever kind incident thereto or to the collection of the indebtedness and obligations secured and/or enforcement of liens and security interest granted under the Deeds of Trust; and

(h) Payment of all other indebtedness arising under or in connection with the Deeds of Trust, the Note (as hereinafter defined), the Loan Agreement, the Letters of Credit, the Reimbursement Agreements, or any other instrument or document now or at any time evidencing, securing or guaranteeing the same [the Note, the Loan Agreement, the Letters of Credit, the Reimbursement Agreements, the Security Documents (as defined in the Loan Agreement), and all other documents evidencing, securing or relating to the Note are herein collectively referred to as the "Loan Documents"] of whatever kind or character, now owing or which may hereafter become owing by Grantor and/or Colorado Oaks to Beneficiary, whether such indebtedness are evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise.

All references to "Note" in the Deeds of Trust shall mean and refer to the Tenth Amended Term Note, the Tenth Amended Revolving Note-Tennessee, the Tenth Amended Revolving Note-Colorado, and the Tenth Amended Revolving Note-Mississippi. All references to Loan Agreement as contained in the Deeds of Trust shall refer to the Loan Agreement as defined herein.

2. It is expressly understood and agreed that the liens of the Deeds of Trust shall secure the Obligations as amended and extended hereby, and the lien of the Deeds of Trust will not be barred by the applicable statute of limitations until ten (10) years after the maturity dates, as above set out; and the land records office is hereby requested to note this modification and extension on the respective books and pages where the Deeds of Trust appears of record in its office. Grantor reaffirms the validity and enforceability of each of the Deeds of Trust and hereby waives the application to any statutes of limitations applicable thereto.

3. In consideration of the extensions and modifications of each Note, the Grantor promises to pay said indebtedness and the interest thereon, as set out in each Note, and to keep and perform all of the covenants, terms and conditions contained in each Note, in the Deeds of Trust, in the Loan Agreement, and in all other loan documents (all as modified and amended hereby), it being expressly understood and agreed that, upon the occurrence of any Event of Default under any of the Deeds of Trust and/or any Default or Event of Default under the Loan Agreement, the owner and holder of the indebtedness evidenced by the Note, may declare said

indebtedness accelerated and matured for all purposes and may proceed to foreclose each of the Deeds of Trust by judicial proceedings or otherwise under powers of sale. Borrower hereby reaffirms the validity, enforceability and lien of the Note and the Deeds of Trust. The Borrower hereby waives any defense of statute of limitations as may be applicable to the enforcement of the Note and/or any of the Deed of Trust. It is expressly understood and agreed that each Note shall continue as evidence of said indebtedness until the same is paid, and that the lien of said Deeds of Trust shall be in no manner whatsoever affected by the execution of this instrument except as the same is modified and amended hereby.

4. Amy Shreve, a resident of Shelby County, Tennessee is hereby substituted as the trustee under each of the Deeds of Trust in lieu of Thomas A. Baker, and hereby all references to Trustee as referred to in any of the Deeds of Trust shall mean and refer to Amy Shreve.


5. All terms, covenants and conditions as contained in the Deeds of Trust are hereby ratified and shall continue in full force and effect, except as expressly modified hereby.

6. This Agreement may be executed in multiple or separate counterparts, each of which shall constitute an original and together all of such counterparts shall constitute a single binding agreement.

7. As modified hereby, the Deeds of Trust are hereby ratified, approved and confirmed in all respects.

IN WITNESS WHEREOF, the Bank and Grantor have caused this Agreement to be executed on the day and year first above written.

FIRST TENNESSEE BANK NATIONAL
ASSOCIATION

By: 
Title: EVP

BANK

KEMMONS WILSON, INC..

By: 
William Batt, Senior Vice President

GRANTOR

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, Kathy Worthington, a Notary Public in and for the State and County aforesaid, personally appeared Dave Dawson, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be a Exec Vice-President of **FIRST TENNESSEE BANK NATIONAL ASSOCIATION**, the within-named bargainer, a national banking association, and that he, as such Exec Vice-President, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the association by himself as such Exec Vice-President.

WITNESS my hand and seal at office, on this the 27th day of September, 2012.

Kathy Worthington
Notary Public

My Commission Expires:
My Commission Expires March 23, 2016



STATE OF Tennessee
COUNTY OF Shelby

Before me, Kathy Worthington, a Notary Public in and for the State and County aforesaid, personally appeared **WILLIAM BATT**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Senior Vice-President of **KEMMONS WILSON, INC.**, the within-named bargainer, a corporation, and that he as such Senior Vice-President, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such Senior Vice-President.

WITNESS my hand and seal at office, on this the 27th day of September, 2012.

Kathy Worthington
Notary Public

My Commission Expires:

My Commission Expires March 23, 2016

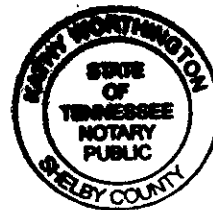


EXHIBIT "A"

Deeds of Trust

1. That certain Mississippi Construction Deed of Trust and Fixture Filing with Security Agreement and Assignment of Leases and Rents, dated January 31, 2006, executed by the Grantor in favor of the Bank, and recorded under Book 2481, Page 27 in the Land Records of Desoto County, Mississippi (the "Land Records"), as amended the following agreements, each executed by the Grantor and the Bank: the Eleventh Modification Agreement recorded in the Land Records under Book 2883, Page 63, the First Modification to the Third Amended and Restated Development And Construction Loan Agreement, and recorded in the Land Records of Book 3127, Page 179, and the Modification (Sixteenth) Agreement, dated July 29, 2010, (unrecorded).